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Total Number of Pages in This Submission

18

Application Number	10/603,643
Filing Date	06/25/2003
First Named Inventor	SHOOK
Art Unit	3743
Examiner Name	Camtu Tran NGUYEN

Attorney Docket Number

8142A

ENCLOSURES (Check all that apply)		
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Remarks <i>Appeal Brief 20 pages attached.</i>		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	WOODLING, KROST AND RUST (KENNETH L. MITCHELL)	
Signature	<i>Kenneth L. Mitchell</i>	
Printed name	KENNETH L. MITCHELL	
Date	MAY 30, 2006	Reg. No. 36,873

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Signature	<i>Kenneth L. Mitchell</i>	
Typed or printed name	KENNETH L. MITCHELL	Date MAY 30, 2006

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No. 0615 P. 4

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: C. David SHOOK et al.

Title: UNDERSTOCKING WITH SLEEVE FOR POSITIONING A GEL PAD

Filing Date: June 25, 2003

Serial No. 10/603,643

Examiner: Camtu Tran NGUYEN

Group Art Unit: 3743

Attorney Docket No. 8142A

May 30, 2006

Commissioner for Patents
P. O. Box 1450
Alexandria, Va. 22313-1450

APPEAL BRIEF

Dear Sir:

In response to the November 30, 2005 final office action, applicant responds as follows. A Notice Of Appeal from the Examiner to the Board of Patent Appeals and Interferences was filed on February 28, 2006.

REAL PARTY IN INTEREST

The real parties in interest are C. David Shook and David J. Hoy.

RELATED APPEALS AND INTERFERENCES:

There are no other appeals or interferences which will directly affect or have a bearing on the Board's decision in this pending appeal.

STATUS OF THE CLAIMS:

Claims 1-20 have been finally rejected, are under appeal, and are found in the attached appendix. The final office action of Nov. 30, 2005, incorrectly indicates that there are 28 claims. Applicant notes the claim 20 is a duplicate of claim 18 and authorizes the Examiner to cancel claim 20.

STATUS OF AMENDMENTS

No amendments filed subsequent to the final rejection have been made to the claims or the description.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 1 recites a stocking comprising a sleeve and a gel pad within the sleeve. Reference is made to the specification page 3, line 14 et. seq., page 7, lines 1-10, page 8, lines 1-11, and Fig. 4, a view of an understocking illustrating the sleeve in which the gel pad resides.

Fig. 1 is a top view 100 of a gel pad 101 which shows a gel pad with a seal 102 which holds the amorphous gel and the plastic seal border 103 which surrounds the gel pad.

The sleeve is formed by an outer portion 401 and an inner portion 401A. Fig 4. shows an understocking 400 illustrating an opening 402 to a sleeve 708 which extends

around most of the stocking. Sleeve 708 is defined by sock surfaces 401/401A. The understocking may optionally be a compression stocking or a graded compression stocking. The understocking has sufficient elasticity to secure the gel pad 101 in place.

In regard to claim 2, a stocking as claimed in claim 1 is recited wherein the sleeve has an opening for accessing, placing, and positioning gel pad within the sleeve. Fig. 4 illustrates an opening 402 to a sleeve 708 which extends around most of the stocking.

Claim 3 recites and claims a compression stocking comprising a sleeve and a gel pad within the sleeve. Fig. 10 shows the compression stocking 1001 over the entire understocking as well as the sleeve. The sleeve is formed by an outer portion 401 and an inner portion 410A. Stitching 403 secures inner portion 401A to the outer portion 401. End of understocking 404 is a portion of the understocking which is folded over and onto itself to form the portions 401/401A. The compression stocking is placed over the entire understocking. The understocking holds the gel pad in position. Reference is made to the specification page 7 lines 18-21, page 10 lines 16-21, page 11, lines 1-4, page 11, line 21, lines 1-4 and line 21, and page 12, lines 1-2 and lines 9-11.

In regard to claim 4, a compression stocking as claimed in claim 3 is recited wherein the sleeve has an opening in said sleeve for accessing, placing, and positioning the gel pad within the sleeve.

In regard to claim 5, a stocking as claimed in claim 2 is recited wherein the stocking includes a folded portion and a stitched portion 403 to form the sleeve. See

specification page 7, lines 8-10.

In regard to claim 6, a compression stocking as claimed in claim 4 is recited wherein the compression stocking includes a folded portion and a stitched portion to form the sleeve.

In regard to claim 7, a stocking as claimed in claim 5 is recited wherein the sleeve extends 360 degrees within the stocking. See Fig. 7 which illustrates the sleeve extending 360 degrees around the stocking. See page 7, lines 11-14 of the specification.

In regard to claim 8, a compression stocking as claimed in claim 6 is recited wherein the sleeve extends 360 degrees within the stocking.

Claim 9 recites a device for treating venous insufficiency comprising an understocking having a sleeve and a gel pad within the sleeve. Reference is made to the specification page 3 lines 14 et. seq. and Fig. 4, a view of an understocking illustrating the sleeve in which the gel pad resides.

In regard to claim 10, a device for treating venous insufficiency as claimed in claim 9 is recited wherein the sleeve has an opening for accessing, placing, and positioning gel pad within the sleeve. Fig. 4 illustrates an opening 402 to a sleeve 708 which extends around most of the stocking.

In regard to claim 11, a device for treating venous insufficiency as claimed in claim 10 is recited comprising a compression stocking residing over the overstocking.

Fig. 10 shows the compression stocking 1001 over the entire understocking as well as the

sleeve. The sleeve is formed by an outer portion 401 and an inner portion 410A. Stitching 403 secures inner portion 401A to the outer portion 401. End of understocking 404 is a portion of the understocking which is folded over and onto itself to form the portions 401/401A. The compression stocking is placed over the entire understocking. The understocking holds the gel pad in position.

In regard to claim 12, a device for treating venous insufficiency as claimed in claim 9 is recited wherein a compression stocking resides over the understocking. Fig. 10 shows the compression stocking 1001 over the entire understocking. Reference is made to the specification page 7, lines 18-21, page 10, lines 16-21, page 11, lines 1-4, and page 12, lines 1-2.

In regard to claim 13, a device for treating venous insufficiency as claimed in claim 9 is recited wherein the understocking includes a folded portion and a stitched portion forming the sleeve. See specification page 8 lines 8-10.

In regard to claim 14, a device for treating venous insufficiency as claimed in claim 13 is claimed wherein the understocking is made from a material selected from the group of nylon, polyester, and cotton. See specification page 8 lines 4-5.

In regard to claim 15, a device for treating venous insufficiency as claimed in claim 13 is claimed wherein the understocking is made from a material selected from an elastic material. See specification page 8 lines 5-6.

Claim 16 recites a method of treating a patient having venous insufficiency

comprising the steps of: applying an understocking having a sleeve onto the foot, ankle and leg of the patient; inserting a gel pad into the sleeve; and, positioning the gel pad about the foot, ankle and leg of said patient to apply pressure to reduce the venous insufficiency. See specification page 10 lines 5 et. seq.

In regard to claim 17, a method of treating a patient having venous insufficiency as claimed in claim 16 is recited further comprising the steps of: applying a compression stocking over the understocking and pads. See specification page 10 lines 13 et. seq.

In regard to claim 18, a method of treating a patient having venous insufficiency as claimed in claim 16 is recited wherein the understocking is a compression stocking. See specification page 10 lines 13 et. seq.

In regard to claim 19, a method of treating a patient having venous insufficiency as claimed in claim 17 is recited wherein the understocking is a compression stocking. See specification page 10 lines 13 et. seq.

In regard to claim 20, a method of treating a patient having venous insufficiency as claimed in claim 16 is recited wherein the understocking is a compression stocking. See specification page 10 lines 13 et. seq.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Issue 1. Did the Examiner correctly reject Claims 1-4, 9-12, and 14- 20 under 35 USC 102(b) as being anticipated by Gold (United States Patent 5,187,814)?

Issue 2. Did the Examiner correctly reject Claims 5, 6, and 13 under 35 USC 103

(a) as being unpatentable over Gold (United States Patent 5,187,814) ?

Issue 3. Did the Examiner correctly reject Claims 7 and 8 under 35 USC 103 (a) over Gold (United States Patent 5,187,814) and further in view of Lyles (United States Patent 6,001,122).

Argument

Issue 1 Whether or not the rejection of Claims 1-4, 9-12, and 14- 20 is correct under 35 USC 102(b) as being unpatentable based on anticipation by Gold (United States Patent 5,187,814)?

Claims 1-4, 9-12, and 14-20

Claim 1 and 2

Gold has been studied. Gold does not disclose a gel pad. The word "gel" is not used in Gold. A heater pack is not a gel pad and it does not appear from Gold that the reference is using the terms heater pack to mean a gel pad. Heater pack 34 of Gold is not the claimed gel pad of claims 1, 9, and 16. Claim 2 is dependent on claim 1 and is allowable for at least the reasons that claim 1 is allowable.

Claims 3 and 9

In regard to independent claims 3 and 9. Gold does not disclose a compression stocking or a stocking of any sort. Gold does not teach a compression stocking. In fact, the words "compress", "compression", and "stocking" are not even used in the Gold disclosure. Compression stockings are known in the art as set forth in applicant's

specification referring to US Patent No. 5,823,195. The sock depicted in Figs. 6 and 7 of Gold is not a compression stocking.

Claims 3 and 9 recite a stocking comprised of the following structure: a sleeve and a gel pad. The Gold reference does not disclose any mention of these terms or structures. As a result, the claims of the instant application do not read on the prior art Gold reference. Gold does not anticipate claims 3 and 9.

Claims 4 and 10

Claim 4 is dependent on claim 3 and is allowable for at least the reason claim 3 is allowable. Claim 10 is dependent on claim 9 and is allowable for at least the reason claim 9 is allowable.

Claims 11 and 12

Claims 11 and 12 require compression stockings and these simply do not exist in Gold.

Claims 13 and 14

Claim 13 requires an understocking having folded and stitched portions. Claim 14 dependent on claim 13 requires an understocking made from the group of materials selected from nylon, polyester, and cotton. Gold does not disclose the elements or limitations of claims 13 and 14.

Claims 16

Claim 16 is a method claim directed to positioning and inserting a gel pad in a

sleeve to position the pad about the foot, ankle, and leg of a patient. Gold does not have the pad or sleeve and therefore does not anticipate claim 16.

Claims 17

Claim 17 requires the step of positioning a compression stocking over the understocking. This structure is missing from Gold and the method of positioning the compression stocking is also missing in Gold.

Claims 18, 19, and 20

Claims 18, 19, and 20 requires the understocking to be a compression stocking. This structure is missing from Gold and the method of treating a patient is also missing in Gold. Claims 18, 19, and 20 are being argued separately.

As such, claims 1-4, 9-12 and 16 are not anticipated and claims dependent therefrom are not anticipated. Anticipation requires that there be an identity of invention. Anticipation requires that all elements and limitations of the claim are found within a single prior art reference. There must be no difference between the claimed invention and the reference disclosure. *Carella v. Starlight Archery and ProLine Co.*, 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed. Cir. 1986). *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1549, 220 USPQ 193, 198 (Fed. Cir. 1983). *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 781 (Fed. Cir. 1983).

The instant applications recites the following structure : gel pad and stocking. The Gold reference does not disclose any mention of these terms or structures. As a result, the

claims of the instant application do not read on the prior art Gold reference. Gold does not anticipate the device of this application.

Issue 2

Whether or not the Examiner correctly rejected Claims 5, 6, and 13 under 35 USC 103 (a) as being unpatentable over Gold (United States Patent 5,187,814)?

Arguments in regard to Claims 5, 6, and 13

As demonstrated above, Gold does not anticipate claims 1 and 9 from which claims 5, 6, and 13 indirectly depend. Hook and pile connects 441, 442 are not folded or stitched portions. Rather, they are connectors which control/seal the opening for placement of the heater pack. The folded and stitched portions claimed in claims 5, 6, and 13 "bind" the sleeve and are not locks or hooks. See Specification page 8, lines 5, 8-11. Nor are hook and pile connects 441, 442 compression devices. Rather, they are believed to be Velcro type locks. There is no suggestion in Gold (directed to heater packs in gloves) to modify it to arrive at the invention of a stocking or compression stocking as claimed in claims 5, 6, and 13. Claims 5, 6, and 13 are not obvious in view of Gold.

Issue 3

Whether or not the Examiner correctly rejected Claims 7 and 8 under 35 USC 103 (a) as being unpatentable over Gold (United States Patent 5,187,814) and further in view of Lyles (United States Patent 6,001,122) ?

Arguments in regard to Claims 7 and 8

As demonstrated above, Gold does not anticipate claims 1 and 3 from which claims 7 and 8 indirectly depend. Lyles appears to be a wrap around device with a hot or cold pack wrapped around a stocking.

The word "stocking" is not used in Lyles. The device is not a stocking and it does not extend 360 degrees around the foot of a user. The term "360" does not appear in Lyles. Rather, each closed edge is in the form of a pleat 23. Claims 7 and 8 are not obvious in view of Gold and Lyles.

Additionally, the references Gold and Lyles present teaching which differs from the invention as claimed. Gold discloses a device for heating garments. See Gold Abstract line 1 and Claims 1-14 of Gold. Lyles teaches the use of a bootie containing at least one thermal pack. Both references teach the use of heat in a garment, neither reference teaches or suggests the use of therapeutic pressure to promote healing of skin ulcers and discolorations. In the instant invention, gel pads are used "to neutralize the elevated internal venous pressure by exerting an equal external compression force." (Spec. Pg. 2 lines 12 et. seq.). The thermal packs in both Gold and Lyles are used to increase heat at the surface of the skin. The references contain no common teaching, understanding, or identification of the problem to arrive at the instant invention as claimed.

MPEP section 2143.01 indicates that the prior art must suggest the desirability of the claimed invention. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some

teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. 'The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.' Here, it is respectfully suggested that the Examiner is improperly combining the references. There is no basis for combining the references as no teaching, suggestion, or motivation is found in the references to arrive at the instant invention as claimed.

In *In re Kotzab*, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) the court held that a "finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of [the claimed invention] to make the combination in the manner claimed" must be made. In the instant application, the Examiner has not identified a specific understanding or principle within the knowledge of the skilled artisan that would have motivated one with no knowledge of the claimed invention to make the combination in the manner claimed. Nowhere does the Examiner identify the artisan given the differences in the problems to be solved, nor does the Examiner explain the motivation for combining the structure of the references.

Further, the references of Gold and Lyles are not properly combinable with the teachings of the instant invention. The heat taught in the references provides a different result on the surface of the skin than pressure as taught in the instant invention.

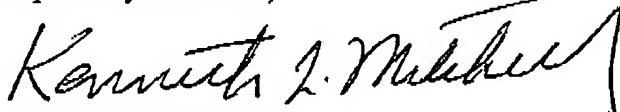
SUMMARY AND CONCLUSION

Claims 1-4, 9-12, and 14-20 are patentable over the Gold reference for the reasons stated above. Claims 5, 6, and 13 are patentable over the Gold reference. Claims 7 and 8 are patentable over the Gold reference in view of the Lyles reference for the reasons stated above. Wherefore, it is respectfully requested that the rejection of the claims be reversed and that the same be determined as being allowable.

FEE

The Commisssioner is hereby authorized to the charge the deposit account no. 23-3060 in the amount of \$250.00 for the Appeal Fee. If there any additional charges, or any overpayment, in connection with the filing of this appeal brief, the Commissioner is hereby authorized to charge any such deficiency, or credit any such overpayment, to deposit account no. 23-3060.

Respectfully submitted,



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Applicants: C. David SHOOK

Title: UNDERSTOCKING WITH SLEEVE FOR POSITIONING A GEL PAD

Filing Date: June 25, 2003

Serial No.: 10/603,643

Examiner: Camtu Tran NGUYEN

Group Art Unit: 3743

Attorney Docket No. 8142A

May 30, 2006

Commissioner for Patents
P. O. Box 1450
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CLAIMS APPENDIX

Claims:

1. (Original) A stocking comprising a sleeve and a gel pad within said sleeve.
2. (Original) A stocking as claimed in claim 1 further comprising an opening in said sleeve for accessing, placing and positioning said gel pad within said sleeve.
3. (Original) A compression stocking comprising a sleeve and a gel pad within said sleeve.

4. (Original) A compression stocking as claimed in claim 3 further comprising an opening in said sleeve for accessing, placing and positioning said gel pad within said sleeve.

5. (Original) A stocking as claimed in claim 2 wherein said stocking includes a folded portion and a stitched portion to form said sleeve.

6. (Original) A compression stocking as claimed in claim 4 wherein said compression stocking includes a folded portion and a stitched portion to form said sleeve.

7. (Original) A stocking as claimed in claim 5 wherein said sleeve extends 360 degrees within said stocking.

8. (Original) A compression stocking as claimed in claim 6 wherein said sleeve extends 360 degrees within said stocking.

9. (Original) A device for treating venous insufficiency comprising an understocking having a sleeve and a gel pad within said sleeve.

10. (Original) A device for treating venous insufficiency as claimed in claim 9 further comprising an opening in said sleeve for accessing, placing and positioning said gel pad within said sleeve.

11. (Original) A device for treating venous insufficiency as claimed in claim 10 further comprising a compression stocking residing over said understocking.

12. (Original) A device for treating venous insufficiency as claimed in claim 9 further comprising a compression stocking residing over said understocking.

13. (Original) A device for treating venous insufficiency as claimed in claim 9 wherein said understocking includes a folded portion and a stitched portion forming said sleeve.

14. (Original) A device for treating venous insufficiency as claimed in claim 13 wherein said understocking is made from a material selected from the group of nylon, polyester, and cotton.

15. (Original) A device for treating venous insufficiency as claimed in claim 13 wherein said understocking is made from a material selected from an elastic material.

16. (Previously Presented) A method of treating a patient having venous insufficiency comprising the steps of:

applying an understocking having a sleeve onto the foot, ankle and leg of said patient;

inserting a gel pad into said sleeve; and,

positioning said gel pad about said foot, ankle and leg of said patient to apply pressure to reduce said venous insufficiency.

17. (Original) A method of treating a patient having venous insufficiency as claimed in claim 16 further comprising the steps of:

applying a compression stocking over said understocking and pads.

18. (Original) A method of treating a patient having venous insufficiency as claimed in claim 16 wherein said understocking is a compression stocking.

19. (Original) A method of treating a patient having venous insufficiency as claimed in claim 17 wherein said understocking is a compression stocking.

20. (Original) A method of treating a patient having venous insufficiency as claimed in claim 16 wherein said understocking is a compression stocking.

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Title: UNDERSTOCKING WITH SLEEVE FOR POSITIONING A GEL PAD

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Group Art Unit: 3743

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EVIDENCE APPENDIX

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Applicants: C. David SHOOK

Title: UNDERSTOCKING WITH SLEEVE FOR POSITIONING A GEL PAD

Filing Date: June 25, 2003

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RELATED PROCEEDINGS APPENDIX

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